By a unanimous opinion of the Sa preme Court, written by Chief Justice Frear, the decree of Judge Matthew-man in the case of M. F. Scott and Nettic L. Scott vs. H. Hackfeld & Co., Ltd., is reversed and the case remanded to the Circuit Judge for such further proceedings as may be proper. Plaintiffs in person; Thompson & Clemons and G. F. Maydwell for defendant.

The law of the case is thus stated:

'A clear case should be made out in order to justify the cancellation of a note and mortgage made in pursuance of part of an oraf contract, on the and of mutual misunderstanding or mistake as to another alleged part of the contract which was not intended to be put in writing. A mere prepon-derance of evidence is insufficient."

Defendant held two due bills from M. F. Scott as collateral to one of two book necounts aggregating \$1908.27, and on October 1, 1902, with his wife executed a note and a mortgage to secure the debt. On September 19, 1904, plaintiffs brought a bill in equity to annul the mortgage and enjoin foreclosure proceedings defendant had brought. Their ground of action was that defendant had not returned the due bills as had orally been agreed it should before the mortgage was Defendant brought a cross bill for an accounting and a decree payment that the mortgaged premises be sold and the proceeds applied to payment of the debt.

The Circuit Judge decreed the note and mortgage to be void and enjoined He did not have the means to stop it the defendant from enforcing them, and then to settle the whole business found the amount then due from M. F. Scott and entered judgment therefor, as well as for one half the expenses, costs, etc., the judgment amounting in all to \$939.41. Both parties appealed. Herefords that Carter imported, and considered them good animals.

NEW TRIAL ORDERED.

A unanimous opinion of the Su preme Court, written by Justice Hartwell, has been rendered in the case of W. R. Castle, trustee, vs. Kapiolani of dealing with the dairy was to sus-Estate, Ltd. It was an appeal from pend operations and turn the animals a directed verdict for defendant in the out when it got too wet. He had First Circuit Court, "on the ground thought of building a dairy at Walmen, that the avidence shows are established. that the evidence shows an estoppel by where conditions were better. Alfalfa, former judgment." The former judg-rye and pili grass would grow at Waiment was in an ejectment suit brought mea, also corn in certain seasons. He by Kapiolani Estate against Castle and had begun raising hogs, but only a few his tenants, Weaver and Hoogs. Jury months before he left. having been waived, the court ordered judgment against Castle and another judgment against Weaver and Hoogs, the latter by default. The judgment against Castle was set aside on error on the ground that sea side on error en the ground that separate judgment cannot be made in a joint action. Ka-piolani Estate obtained possession of the land by a writ on the judgment against Weaver and Hoogs, and Castle brought the present action.

The Supreme Court vacates the judg-

ment and orders a new trial. Castle & Withington for plaintiff; Kinney, McClanahan & Coope, for defendant.

MAUI COURT SUSTAINED.

The Supreme Court, in a unanimous epinion by Justice Wilder, overrules exceptions from Judge Kepolkal's judgment for plaintiff, jury being waived, in the ejectment suit of Mose Meheula vs. Pioneer Mill Co. for a piece of land at Uhao, Lahaina. C. W. Asharat January Lahaina. ford and James L. Coke for plaintiff; D. H. Case for defendant.

The greater part of the cross-examination of Archie Kaaua in the Parker ranch case was taken up with the question of the understocking of paddocks. The witness was shy on figures. he had no choice between five and five thousand as the number of cattle short, nor between one hundred and POLOMEN five hundred as the number already in a given paddock. He knew that the ranch kept a record and that every animal put in and taken out wa counted. Why the gate between Waikii and Pakili was open at times and closed at times was a mystery to the witness, but it was improper anyway.

The witness having been in tempor ary charge at Puuwaawaa was asked if he had ever formed a judgment as to whether that ranch was overstocked at that time, but had not observed it.

'Did you ever hear that your brother -Eben Low-overstocked that ranch so that Hind lost a thousand cattle and the rest nearly starved?" asked Kin-

"I never heard that it was the over stocking by Eben Low that caused the

"What did cause it?" "I don't know."

"Was it the dry weather?"

"I think so."

"Then you think it is proper management to stock a ranch to such a point that it requires good weather to carry the cattle through?"

think it is proper that a manager should take into consideration times of famine as well as times of plenty." "Then what ought the rule to be in

regard to the number you carry?" 'My idea would be to do what was of benefit to yourself,"-with which rule of action the attorney had to be content.

Returning to the Parker ranch, Kinney asked:

'Has Carter managed the ranch so that in good or bad weather he has never been caught without sufficient

"I don't remember any time they short," replied the witness, Kinney questioned the witness as to the droughts of 1901 and 1903 and the Hawaii.

casion when cattle were sent from Puuwaawaa ranch to Watmes to save their lives. The witness admitted that throughout all these times Carter had never been obliged to refuse an order

for fat cattle. Was that chance," asked Kinney, was it the result of deliberation though\$7"

"I wish you would enlighten me as to the question," said the witness. "You are in the witness stand to nlighten us." retorted Kinney.

"When the questions are framed so that I can answer them.

"Well, I guess that question will answer itself," said Kinney, and the round was declared a draw.

Kinney probed gently into the man-er of the witness's leaving Eben Low's "Didn't your brother discharge you?"

ne asked.
"No," explained the witness. sent me with a shipment of cattle for the Kohala market. Several died on the way, and I was afraid he would be angry, so I did not go back at all, but went to Waimea."

"And he never sent for you?"

"No." Paul Jarrett was next called to the stand and examined as to conditions on the ranch prior to and at the time Carter took over control. He had become manager before uncle died, and had held office while the trustees were in charge. The mortgage of \$100,000 had been paid off before he left, but not Sam Parkers mortgage on his half,

Magoon asked the witness in detail concerning each paddock on the ranch in his time, and how many head each would carry in dry and wet weather. With regard to fences the witness said that three miles would fence off the requiring the plaintiffs to pay the Kohala mountains, but to fence off amount found due, and in default of Maunakea would be very costly. If the fence were built it would take a long time to tame all the wild cattle.

Inbreeding was prevalent on the ranch when the witnes was in charge by fencing off the whole ranch, as the trustees had directed him to be economical. He had swapped bulls with the other ranches and thus got what new blood he wanted. He had seen the

There was considerable ivy on the ranch when he took charge. It was very slow growing, and he did not know that he had spoken to Carter about it though Carter had seen it. His method

THE COWBOYS

Honolulu merchants are showing great interest in the cowboy festival which takes place the day after tomorrow in Kapiolani Park. Many handsome prizes have already been offered and many more are promised.

A display of premiums will be made porrow in one of the windows of E. O. Hall & Son and the list at present is as follows:

Theo. H. Davies & Co., one handcarved Mexican saddle; H. Hackfeld & Co, and Metropolitan Meat Co., cash each; E. O. Hall & Son, one Winchester rifle; Pacific Hardware Co., one Colt revolver and holster; R. Banning, \$10 cash; M. McInerny, Ltd., one Stetson cowboy hat; M. Greenbaum & Co. 1-2 dozen shirts and one dozen pair socks; McInerny Shoe Store, one pair storm calf sporting boots; Fred Philp

great many more entries than was originally expected.

A contingent of Maul boys is pretty sure to come.

A real Cheyenne cowpuncher now

belonging to the soldier forces in town will try to wrest some of the prizes from the native sons.

The choicest seats in the grand stand are reserved and tickets are on sale at Wall, Nichols Co. at 50 cents each. Seats in the unreserved section will sell at 25 cents each on the ground.

TO THE COAST

The following article, which will interest pole players throughout Hawaii, is taken from a recent San Francisco Chroniele:

If all the pole teams appear on the Coast that have signified their intention of coming to California this winter local enthusiasts will see international matches that cannot be surpass

ed in any part of the world.

Rudolph Spreckels has received a letter from Honolulu in which is stated that a polo team would come up from of December if the local players had

the season under way. Secretary Leighton of the Pony Racing Association has heard that Sir Rupert Clark is considering bringing string over from Australia to race at the winter meeting of the New Cali-fornia Jockey Club, and that if he judgment is substantially united. It makes the trip he will be accompanied

by the crack polo team of Australia. These two teams, with the two English teams, the Eastern team, and the military team, will make five teams to go up against the California players. The Coast can east, furnish three strong teams, which will make eight teams in the field.

DO NOT NEGLECT A BAD COLD. Never allow a cold to take its course. Too often at this season of the year its course is toward pneumonia. Cham-berlain's Cough Remedy will promptly cure your cold and counteract any tendency in this direction. You canno afford to take such a risk for the small amount this medicine will cost you For sale by All Dealers and Druggists Benson, Smith & Co., Ltd., Agents for

(By Henry E. Highton.)

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during law in its relation to Hawaii, latands and especially in Honolulu, where asiatic intrusion into the depart may I be permitted to add a few sup-

able contribution to the cause of Americanism in Hawaii, which his answer to Judge Hart's interesting paper com-pletes. A communication by Secretary Atkinson to the New York Independent has also been reprinted, which clearly presents the argument in favor of citizen labor and sustains the policy of the multiplication of homes, through the distribution of land.

In reference to this subject, however, it seems to me that there are practical questions to be considered that ought to be immediately decided.

There are two points to be kept in

view:
1. The most earnest and definite en uragement to the introduction of citizens and of classes of aliens who are eligible to citizenship is absolutely esnatural result of annexation, much retarded through local causes, is Americanization. President Roosevelt, quoted by Secretary Atkinson, struck the ker-note, when he insisted on development 'along traditional American lines." This is exactly what genuine Americanization means. Every movement that tends in this direction should and will command the endorsement of Americans, of all extractions, both here and on the mainland.

But the labor necessities of the sugar plantations can and must be met. This most important of all Hawaiian industries demands and is entitled to Particularly is this true, where, as receive adequate protection. As I have Hawaii, Congress has the power and previously observed, the labor situa-tion of today was anticipated when annexation took place, and the good faith of Congress and, therefore, of the people of the United States, was virthe Constitution, necessary to solve

the existing problem.

That problem is, How to extend citizenship, to multiply homes, and to foster diversified industries, and, at the same time meet the labor demand on determination requires harmony and oncentration.

There are four ways in which it has been suggested that unskilled labor for the cane-fields can be obtained: First, through the introduction of elti-zens, actual or potential, who are able and willing to make homes for them selves and fill the places of Asiatics; second, through the introduction of the same class or classes, to grow cane un-der contract on limited areas of land; third, by a modification of the exclu sion law, permitting the importation into Hawaii of a limited number of Chinese under close and effective re-strictions; and, fourth, by a combina-

tion of all these various methods.

Now the Planters' Association undoubtedly represents a large amount of capital, unprecedented success in the production of sugar, and wide and deep knowledge and experience in every de-partment of the business, so vital to the Territory and so important to the mainland, and its attitude on these propositions should be influential and probably controlling. The main thing acking is a distinct expression of its views and its wants.

If the demand for unskilled laborers can be filled by citizens or by aliens qualified for citizenship, that is an end of the discussion and no other action is required but to facilitate that kind & Bro., one bridle.

The exhibition is bound to draw a big crowd and there will probably be this class of labor can not be precured, to be ans or persons fi come Americans, of every hue, either can not or will not toil in the cane, and there certainly is a pride of citizenship that, as a factor in the question, it is difficult to ignore. What then is the truth about this matter? It appears to me that it is up to the Planters' Association to answer.

Is the contract system possible? To some extent, it has been tried. Would this plan, assiduously followed, end the difficulty? Here, again, decisive information is within the breast of the Planters' Association.

If neither of these methods of treat-ment is sufficient, or if they are inadequate, what is there left but resort to Chinese!

It is easy to fall between two stools Halting between diverse opinions is another mode of expressing the aphor-

ism. Is anything to be done or is the present condition to be left to take care of itself? If the Chinese are wanted, then rapid and systematized movement is imperative.

The long session of Congress begins

in December. Exclusion will be theme and a subject of national legislation. What is to be the attitude of Hawaii or is it to take any attitude at allf Generalities will accomplish noththe islands some time during the month ing. The aim must be specific, and the work direct and pointed, or, if relief through a modification of the exclusion law is desirable, it will fail,

It is certain that the general policy of excluding Asiatics from the United States will not be changed but intenis credibly stated that, acting for its own interests, Japan favors the exthe United States. Be this as it may the American nation is determined to maintain its own racial autonomy. The evidence to this effect does not come from labor unions or from wage earners only, but from all classes. The expressions of Secretary Taft are a condensation of public opinion, cor-

roborated from every direction. cised, the course to be pursued is ob-

As already said, without local harmony and concentration nothing can be

Editor Advertiser: Having taken dustries and in those occupations that ome part in the discussion of the ex-Lately Judge Dole, out of the stores of his wide experience and so not thought, prepared and published a value manent. It will tend to arrest the manent. It will tend to arrest exodus or the whites, so justly de plored by Judge Dole and by Secretary Atkinson alike, to restore industrial prosperity and to promote Americaniza

The special case of Hawaii should be vigorously presented, backed by irre-fragable statistics and other facts, All proper instructions and regula-tions of Chinese immigration should

be distinctly advocated. The authority of Congress and its pledge to guard the interests of the Territory should be invoked forcibly and plainly.

American labor combinations should be reached by the irrefutable proposi-tion that the employment of Chinese on the sugar plantations will in no degree conflict with unskilled American labor and will enlarge the demand for skilled wage-carners. If labor unions should object to special legislation for Hawaii, necessitated by unique conditions, let them apply test to themselves and, if they can do so, furnish American laborers for field work. It they can not, then their ob jections are answered, and the prosper ity of the planters is identified with their own real interests.

I am quite convinced that any com munity in the United States that knows what it wants and that what it wants is right, can get it, if it tries in a straightforward and strong way Hawaii, Congress has the power and is under the obligation to fill a reasonable demand. It is half-formed opinions, conflicts about trifles, a lack of defi-niteness and firmness, indecision and scattering of energy, undue procrasti tually pledged to all legislation, under nation, that beat communities as well as individuals in the promotion of legitimate objects.

Should the Planters' Association formulate its own wishes, invite the aid of the public and bring the facts and the converging streams of influthe plantations. This question has to ence to bear upon an intelligible plan be dealt with on exact lines, and its it is not too late to approach the peo ence to bear upon an intelligible plan, ple and Congress with almost irresist

If the local and exceptional acquisition of unskilled Chinese labor, accompanied, as a general policy, by ex-clusion that really excludes, would end the troubles on the plantations, would enlarge the field for American wageearners and business men, and would prevent the further and disastrous parring out of Americans from Hawaii by opening up to them opportunities for prosperous industry, what rational and patriotic citizen should complain? It is truth, simplified and applied, that will extricate this Territory from Its embarrassments and remove the clogs obstructions to progress. Doubt and hesitation never yet captured the American public.

HENRY E. HIGHTON. Honolulu, October 17, 1905.

Many a Resident of Honolulu Will Tell

We are living in a very rapid age. Few of us bother our heads about small things, and so many persons look upon a pain, ache or lameness in the ack as a small thing. They wait for i to pass off, giving no thought to the cause, Remember; The kidneys are the sewers of the system; they carry off the impure matter, but sewers sometimes become clogged up. So do the kidneys. The kidneys are located near the small of the back, hence any toppage affects the back. This means backache, lame back, weak back and many other distressing symptoms. There is lots more to tell on this subject, but we won't do it here, for we want to show you how to keep the kidneys so the back will have no cause to ache. You might not believe us, so we will let one of your own citizens

tell their experience: W. F. Williams of this city, is a light-house keeper, and he has held this position for the last 30 years. He "I was for a number of years, BAYS: one of that numerous army of people who suffer with their backs. ached and pained me to no small extent, so that I was glad when I heard of a remedy for it. Doan's Backache Kidneys Pills. I obtained some of these at the Hollister Drug Co.'s store, and took them. They gave me great relief, and I make this short narration of my experience for the benfit of other who perhaps do not know that nearly all backache arises from the kidneys, and the best medicine for it is Doan's Backache Kidneys Pilis."

Doan's Backache Kidneys Pills are 50 cents per box, for sale by all druggists; sent by mail on receipt of price by the Hollister Drug Co., Honolulu, wholesale agents for the Hawaiian Islands.

The army transport Sherman will sail from this port on November 6 for Ma-nila, carrying the Fifteenth Infantry, Col. H. C. Ward commanding, forty five officers and about 900 enlisted men also one squadron of the Fourth Cav alry, Major E. F. Wilcox command-ing. eight officers and about 200 enlisted men. These troops are stationed at the Presidio of Monterey. Colonel If, then, the sugar planters need George Andrews, military secretary of Chinese, and business sense is exer- the Pacific division, will sail on the Sherman, to take station with the Philippines division. His family accom-panies him to Manila. Colonel Edward A. Godwin, Fourteenth Cavalry, arrived in this city from Jefferson barracks, limit Asiatic competition in skilled in from Manila on October 15.—Chronicle accompanied by Mrs. Cushman.

Energy, Ambition, Cheerfulness, Strength, a Splendid Appetite, and Perfect Health



may be secured by all who follow the example of the young lady who gives this

"Every spring, for years, I used to have intolerable headaches and total loss of enintolerable headaches and total loss of energy, so that the season which should be welconed by me was a dread; for, as the warm, pleasant days arrived, they brought to me lassitude and pain. A friend advised me to take

Ayer's Sarsaparilla

then the first symptom of headache. My appetite is splendid, and I perform my duties with a cheerfolness and energy that surprise myself. I take pleasure in telling all my friends of the merit of Ayer's Sarsaparilla, and the happy results of its use."

There are many imitation Sarsaparillas. Be sure you get "AYER'S." Prepared by Dr. J. C. Ayer & Co., Lowell, Mass., U.S. A.

AYER'S PILLS, the best family laxative. WOLLISTER DRUG CO., AGENTS

Editor Advertiser: Kindly pardon me for likely my too eager interest in this Territory of Hawaii, but certainly our needs at present, to my mind, are something more than just "common!" Can it be that any board or associa

tion would think, for a moment, that American citizens, even the poorer, poorest class of workmen, would risk to travel some thousands of miles to work on our plantations when by traveling in a train for a few hours or even many, they could reach any one of three sorts—sugar, rice or cotton?
Now, why would they come here to
Hawaii? Why, if plantation work
(coolie) were proposed to a man on
the mainland the end would be, likely,
a personal conflict—a fight. As for a personal conflict—a fight. As for the "home," the acres and the house, that proposition also seems, to our a sort of Arabian Nights' dream -a Spanish-castle affair! What we need is the Chinese contract laborer for the plantation, and that, with other help from the Federal government, in the way of forts and all the rest, will cause Hawaii to become settled and enriched along "traditional Amer-ican lines." But all this will take time, patience and, better than all, the most earnest work at Washington by wise, calm and diplomatic men, men-men

ANNE M. PRESCOTT. HAWAII BEING JAPANNED.

Serious Phase of Labor Problem at Our Halfway House.

It is almost a unique situation that a country having the possibility of great industries has not the popula-tion to furnish the necessary labor. In Porto Rico we have the opposite situation, 3000 square miles of territory over 1,000,000 inhabitants. In Hawaii, with 6500 square miles, we have but 150,000. In the Philippines there are both territory and inhabi-tants, the territory undeveloped and

the people unacquainted with the re-

In Hawaii, with all of its possibilities for development, the one interest that has not been neglected, that has been nurtured and fostered and made to grow to its fullest extent is that of sugar and, as a result, practically all of the large business interests of the 150,000 people are in the hands of 6000 whites, of whom perhaps 100 control three-quarters of the great wealth of the islands. With the native Hawaiian race fast dying out, it has been necessary to look elsewhere for the labor with which to cultivate the cane Work in the cane fields, among the tall growth, in a humid climate, shut out from light and air, is not such as to attract white men. Directly in the path of immigration from the Orient Hawaii has, therefore, been compelled to seek Asiatic labor. The Chinese coolies, ideal for the purpose here, peaceable and non-aggressive, even though they contribute nothing to citizenship, are prohibited under the Chinese exclusion laws, so that, save save for what remains of the earlier Chinese immigrants, Hawaii is at the mercy of Japan for its labor. The direct result of this is that the Japanese are now one-half of the population of Hawaii numerically, and more than one-half in indicated in a domineering and dicta-torial hearing. The danger to Hawaii, and incidentally to the whole country from this situation, is not to be over What is required and desired is the Americanization of Hawaii, whereas it is being Japanned—if the word may be so used."—Public Opin-

to duty at the naval station as assist-Exclusion must not be amaganized, Missouri, and will await the arrival of ant to Captain Niblack, is expected to but its extension supported so as to his regiment, which is scheduled to sail arrive from the Coast today. He is

Lieut. Cushman, U. S. N., ordered

The undersigned having been appointed agents of the above company are prepared to insure risks against dre on Stone and Brick Buildings and on Merchandise stored therein on the sost favorable terms. For particulars

F. A. SCHAEFER & CO., Agta

North German Marine Insur'ce Co. OF BERLIN. Fortuna General Insurance Co. OF BERLIN

The above Insurance Companies have stablished a general agency here, and the undersigned, general agents, are authorized to take risks against the dangers of the sea at the most reason-able rates and on the most favorable terms.

F. A. SCHAEFER & CO., General Agenta.

General Insurance Co. tor Sea River and Land Transport of Dresden.

Having established an agency at Ho-nolulu and the Hawaiian Islands, the undersigned general agents are authorized to take risks against the dangers of the sea at the most reasonable rates

and on the most favorable terms, F. A. SCHAEFER & CC., Agents for the Hawalian Islands

UNION PACIFIC

It was the Route in '49! It is the Route today, and Will be for all time to come.

THE OLD WAY.



THE NEW WAY.



THE OVERLAND LIMITED." ELECTRIC LIGHTED RUNNING EVERY DAY IN THE YEAR Orly Two Nights between Missiouri and

Montgomery St. San Francisco, Cal. S. F. BOOTH. General Agent.

FROGS IN HAWAII.

It is gratifying to hear that the importation of frogs into the Hawaiian Islands has proved to be a success. The islands had no frogs, they needed them and the demand has finally created a home supply. According to the report of the fish commission the frogs are multiplying, and it may soon be

profitable to catch them for market. It was not the original purpose, owever, to eat the frogs, but to give them a chance to eat the things that were not desirable to have around. A certain worm infested the grass slime in and about the pools, and if cattle or sheep swallowed it they were likely to die. It was thought also that the frogs might assist in thinning out some of the noxlous insects. So some of the planters persevered in shipping frogs from the United States, though the island rats declared war on the newcomers and killed most of the

early importations. The frogs are now very well scattered over all the islands and are making their influence felt. They are playing havoc with some of the insects; they are reducing the number of flukes that decimate the herds and flocks in a most insidious way. The natives say it is good to have frogs around and they are glad the little fellows have taken so kindly to the is-

Perhaps many of us do not appreciate the frog as much as he deserves, but we might feel our loss if he should disappear.—New York Sun.

FAIRY TALES ABOUT HAWAII

Secretary Atkinson has in the executive mail a letter from a Philadelphia man, who says he saw a dispatch in the Philadelphia Ledger stating that the Hawalian Government was offering citizens forty acres of land each, together with money to build a canegrinding mill. This correspondent was ready to accept the offer. It will surprise him to be informed that if he effective working strength, a position had money enough to build a sugar in which they feel so secure that here mill be would never need land to till, the yellow peril is very real and is or have to do a day's work the rest

Another correspondent on the mainland says he is informed there are mines in Hawali and asks: "What kind of mines are they and are they worked to any extent." So Dr. Russel's thesis to show the practicability of working the red soils of Hawaii into merchantable pigs and ingots must have gained considerable publicity on the mainland during the few months since it was published in the Adver-